

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Mark Anthony Gonzalez,

Case No.: 2:25-cv-01080-APG-BNW

4 Petitioner

Order Directing Service of Petition

5 v.

6 Nethanjah Breitenbach, *et al.*,

7 Respondents

8 Mark Anthony Gonzalez has filed a 28 U.S.C. § 2254 petition for writ of habeas corpus.
9 ECF No. 1. Gonzalez argues that he did not knowingly, voluntarily, and intelligently plead
10 guilty to two counts of residential burglary in Ninth Judicial District Court (Douglas County). I
11 have reviewed the petition pursuant to Habeas Rule 4, and at this time I direct that it be docketed
12 and served on the respondents.¹

13 A petition for federal habeas corpus should include all claims for relief of which the
14 petitioner is aware. If the petitioner fails to include such a claim in his petition, he may be
15 forever barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b)
16 (successive petitions). If the petitioner is aware of any claim not included in his petition, he
17 should notify the court of that as soon as possible, perhaps by means of a motion to amend his
18 petition to add the claim.

19 I THEREFORE ORDER that the Clerk of Court electronically serve the petition [ECF
20 No. 1] on the respondents.

21
22 ¹ The petition argues that the state appellate court made an unreasonable determination of fact in rejecting
23 his claims; this court may consider such a claim under § 2254(d)(2). The court notes though, that the
petitioner also asks the court for an order requiring the state appellate court “to adjudicate [the
petitioner’s] constitutional appellate issues on direct appeal.” ECF No. 1 at 2. This court lacks
jurisdiction to order a state court to take a particular action.

1 I FURTHER ORDER that the Clerk add Aaron D. Ford, Nevada Attorney General, as
2 counsel for the respondents and provide the respondents an electronic copy of all items
3 previously filed in this case by regenerating the Notice of Electronic Filing to the office of the
4 AG only.

5 I FURTHER ORDER that the respondents file a response to the petition, including
6 potentially by motion to dismiss, within **90 days** of service of the petition, with any requests for
7 relief by petitioner by motion otherwise being subject to the normal briefing schedule under the
8 local rules. Any response filed is to comply with the remaining provisions below, which are
9 entered pursuant to Habeas Rule 5.

10 I FURTHER ORDER that any procedural defenses raised by respondents in this case be
11 raised together in a single consolidated motion to dismiss. In other words, the court does not
12 wish to address any procedural defenses raised herein either in seriatum fashion in multiple
13 successive motions to dismiss or embedded in the answer. Procedural defenses omitted from
14 such motion to dismiss will be subject to potential waiver. The respondents should not file a
15 response in this case that consolidates their procedural defenses, if any, with their response on
16 the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly
17 lacking merit. If the respondents do seek dismissal of unexhausted claims under § 2254(b)(2):
18 (a) they will do so within the single motion to dismiss not in the answer; and (b) they will
19 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
20 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
21 including exhaustion, should be included with the merits in an answer. All procedural defenses,
22 including exhaustion, instead must be raised by motion to dismiss.

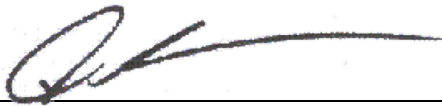
1 I FURTHER ORDER that, in any answer filed on the merits, the respondents specifically
2 cite to and address the applicable state court written decision and state court record materials, if
3 any, regarding each claim within the response as to that claim.

4 I FURTHER ORDER that the petitioner has **45 days** from service of the answer, motion
5 to dismiss, or other response to file a reply or opposition, with any other requests for relief by
6 respondents by motion otherwise being subject to the normal briefing schedule under the local
7 rules.

8 I FURTHER ORDER that any additional state court record exhibits filed herein by either
9 the petitioner or the respondents be filed with a separate index of exhibits identifying the exhibits
10 by number. The parties will identify filed CM/ECF attachments by the number of the exhibit in
11 the attachment, and each exhibit will be a separate attachment.

12 I FURTHER ORDER that, at this time, the parties send courtesy copies of any responsive
13 pleading or motion and all INDICES OF EXHIBITS ONLY to the Reno Division of this court.
14 Courtesy copies shall be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, and
15 directed to the attention of “Staff Attorney” on the outside of the mailing address label. No
16 further courtesy copies are required unless and until requested by the court.

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18 DATED this 16th day of July, 2025.

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20 
21 _____
22 ANDREW P. GORDON
23 CHIEF UNITED STATES DISTRICT JUDGE